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Filing date: **03/09/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200185
Party	Defendant Delta Direct Marketing, LLC
Correspondence Address	TODD BRAVERMAN ESQ PEARL COHEN ZEDEK LATZER LLP 1500 BROADWAY FL 12 NEW YORK, NY 10036-4068 UNITED STATES TM-USPTO@pczlaw.com
Submission	Motion to Reopen
Filer's Name	Todd Braverman, Esq.
Filer's e-mail	tm-uspto@pczlaw.com
Signature	/tjbraverman/
Date	03/09/2012
Attachments	Motion to Reopen Discovery - Ultimate OXY - Final.pdf ( 4 pages )(65599 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Application No. 85226472

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ULTIMATE NUTRITION, INC.,	)	
	)	Opposition No. 91200185
Opposer,	)	
	)	U.S. Application No. 85226472
v.	)	
	)	Mark: ULTIMATE OXY
DELTA DIRECT MARKETING, LLC,	)	
	)	
Applicant.	)	
-----	x	

**MOTION TO RE-OPEN AND EXTEND TIME TO EXCHANGE INITIAL  
DISCLOSURES AND SUBSEQUENT DATES**

United States Patent & Trademark Office  
Trademark Trial & Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313

SIR:

Applicant, Delta Direct Marketing, LLC, a Delaware limited liability company, having an address at 113 Alder Street, West Babylon, New York 11704 (“Delta” or “Applicant”), through its counsel, hereby moves the Trademark Trial & Appeal Board to re-open and extend the time for the parties to exchange initial disclosures and all subsequent discovery and trial dates in accordance with the below schedule:

Discovery Opens	8/18/2011
Initial Disclosures Due	4/17/2012
Expert Disclosures Due	7/15/2012
Discovery Closes	6/14/2012
Plaintiff's Pretrial Disclosures	7/30/2012

Plaintiff's 30-day Trial Period Ends	8/14/2012
Defendant's Pretrial Disclosures	10/29/2012
Defendant's 30-day Trial Period Ends	11/13/2012
Plaintiff's Rebuttal Disclosures	12/28/2012
Plaintiff's 15-day Rebuttal Period Ends	01/27/2013

Taking into account all relevant circumstances surrounding Applicant's excusable neglect in serving Initial Disclosures and Discovery Requests upon Opposer, namely, (1) the *de minimis* danger of prejudice to Opposer, (2) the minimal length of the delay and its minimal impact on judicial proceedings due to Opposer's actions, (3) the reason for the delay, which was due to Opposer's actions and (4) Applicant's good faith, Applicant requests that additional time is needed in order for Applicant to provide and serve Initial Disclosures and Discovery requests on Opposer, Ultimate Nutrition, Inc.

Applicant and Opposer held the parties initial conference on July 14, 2011 and reached a mutual settlement in principal. Applicant prepared a Trademark Settlement Agreement ("Agreement") to Opposer for review and execution on July 26, 2011.

Applicant continuously attempted to reach Opposer via e-mail to find out the status of the Agreement. Applicant sent e-mail inquiries to Counsel for Opposer on September 14, 2011, October 11, 2011, November 1, 2011, November 28, 2011 and December 26, 2011. Counsel for Opposer continuously indicated that he was waiting for his client's comments, but never indicated that Opposer rejected the Agreement or that the Opposition would be proceeding.

Without written notification to Applicant that Opposer rejected the Settlement, Opposer served Initial Disclosures and Requests for Documents on Applicant via first-class mail on February 14, 2012, the final day to serve discovery.

As a result of Opposer prolonging settlement discussions, the parties failed to exchange of initial disclosures by the September 17, 2011 deadline, failed to mutually extend the discovery period and failed to modify the protective order.

In order not to prejudice Applicant by Opposer's last minute filing of its Initial Disclosures and Request for Documents without written notice that Opposer rejected the proposed Settlement, Applicant requests re-opening the time period to serve Initial Disclosures and Discovery Requests on Opposer as per the above modified trial schedule.

In the alternative, Applicant requests that if this motion is denied, that its time to provide disclosures and discovery requests be extended until ten business days after determination of this Motion.

The foregoing motion is not being filed for the purpose of mere delay of the proceedings and favorable consideration of this request is respectfully solicited.

Respectfully submitted,

/tjbraverman/

Todd Braverman  
Counsel for Applicant  
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New York, NY 10036  
(646) 878-0820

Dated: March 9, 2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Application No. 85226472

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	)	
Applicant.	)	
-----	x	

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Alexandria, VA 22313-1451

**CERTIFICATE OF FIRST-CLASS MAIL SERVICE**

I hereby certify that a copy of the foregoing “MOTION TO RE-OPEN AND EXTEND TIME TO EXCHANGE INITIAL DISCLOSURES AND SUBSEQUENT DATES” was mailed first-class mail, postage prepaid, to William Wright, Esq., Epstein Drangel LLP, One Grand Central Place, New York, NY 10165, attorneys for Opposer, this 9<sup>th</sup> day of March, 2012.

Date: March 9, 2012

\_\_\_\_\_/tjbraverman/  
Todd Braverman Esq.